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DECISION



21009 Roberts

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205031

DATE: March 4, 1982

MATTER OF: Monaco Enterprises, Inc.

DIGEST:

A late telegraphic bid modification which was received the Friday preceding a Monday morning bid opening at the telegraph receiving office located on the Government installation and manned by a Government employee, but which was not transmitted to the bid opening at the procurement office less than one-half mile away until after bid opening, was properly considered by the agency under the solicitation's late bid clause because the delay in delivery was attributed solely to Government mishandling after receipt of the telegraphic modification on the Government installation.

Monaco Enterprises, Inc., protests the award of a contract to King-Fisher Company for the installation of a radio-controlled fire alarm system at Fort Benjamin Harrison, Indiana, under invitation for bids (IFB) DABT-15-81-B-0089 issued by the Department of the Army. Monaco asserts that the Army improperly considered a late telegraphic modification which lowered King-Fisher's bid price, displacing Monaco as the low bidder under the IFB. We deny the protest.

Bids were opened at 10 a.m. on Monday, September 28, 1981. Monaco bid \$142,210 and King-Fisher bid \$178,000. About an hour after bid opening, Monaco telephoned the contracting officer for bid results and was advised that it was low and likely would receive award. A short time later, King-Fisher telephoned for bid results and, when informed that Monaco had submitted a bid approximately \$36,000 less than King-Fisher's, asked the contracting officer if a telegram lowering King-Fisher's bid by

\$40,000 had been received, King-Fisher was informed that no telegraphic modification was received at the procurement office, but that the matter would be investigated.

An investigation by the contracting officer revealed that King-Fisher's telegram, properly marked as a bid modification, was received on a Western Union telex machine, located in the Fort Harrison housing office, at 2:41 p.m. on the preceding Friday, September 25. The telegram, however, was not delivered to the site of the bid opening at the procurement office, located in a building less than one-half mile away from the housing office, until 3:21 p.m. on Monday, September 28, more than 5 hours late for the scheduled bid opening.

The reasons for the delay in delivery after receipt at the housing office are set forth in the record in a statement of the Government employee who acted as the Western Union telex operator. She recounts the following pertinent events:

"[At approximately 2:41 p.m., September 25,] I tore the [King-Fisher] message off of the [telex] machine and looked up procurement division's phone number * * *. I phoned them twice, in quick succession, and both times I got a busy signal. I tried to reach procurement division later, at approximately [3:00 p.m. on September 25], but there wasn't any answer and I did let the phone ring for approximately three minutes. * * * I called downtown Indianapolis Western Union and asked them to advise me on this particular message. They told me that they would [send a notice to the sender that the message was undeliverable] and in the meantime [advised me to] mail the message out through our regular distribution system [for on-post use only] to procurement. * * *

"* * *[W]e do not have [Western Union] delivery service at Ft. Benjamin Harrison * * *. There wasn't anything that I could do with this telegram, except that which I actually did--called downtown Indianapolis and told them of the problem in contacting procurement division and let them handle it from there. I mailed it out like I do with all the messages that come in here, unless the message is picked up on the day it comes in this Office."

The IFB allowed telegraphic bid modifications and included the following Defense Acquisition Regulation § 7-2002.2 language with regard to late bids and bid modifications:

"(a) Any bid received at the Office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and * * *

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"(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

"(b) Any modification or withdrawal of bid is subject to the same conditions as in (a) above * * *."

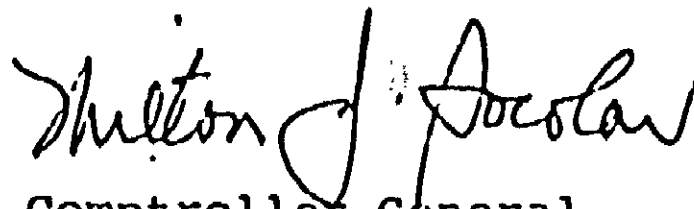
Based on her investigation, the contracting officer concluded that the lateness of King-Fisher's telegraphic modification was due solely to Government mishandling after receipt at the Government installation. The contracting officer reached this conclusion because the Government employee who operated the Western Union telex machine in addition to her normal Government duties at the on-post housing office failed to notify the procurement office that a telegram had been received and to assure that it was delivered before bid opening. Therefore, the Army determined that King-Fisher's late bid modification would be accepted under the Government mishandling exception to the late bid and modification rules found in the IFB. As a result, Monaco was displaced as low bidder by \$4,210 and award subsequently was made to King-Fisher.

Monaco asserts that the Government mishandling exception does not apply here, alleging that the lateness of King-Fisher's bid modification was not due solely to Government mishandling, but rather it was due to the "joint negligence of the Government and Western Union." We disagree. In our view, once King-Fisher's properly marked telegraphic bid modification arrived on the Government installation and

was in the hands of a Government employee a sufficient time prior to bid opening, it was, for purposes of the late bid and modification rules, in the control of the Government; any mishandling thereafter must be attributed solely to the Government. See also S&Q Corporation, B-186794, November 11, 1976, 76-2 CPD 402.

In our view, the Government's inability to transmit King-Fisher's telegraphic bid modification less than one-half mile from the on-post housing office to the procurement office during a four calendar, two business day, period clearly constituted mishandling. Fort Harrison apparently lacks any procedures to expedite on-post transmission of telegraphic bid material, and the procurement office evidently does not routinely check with the telegraph receiving office for bid material; we believe that these factors contributed to the Government mishandling. Under these circumstances, King-Fisher's late telegraphic modification could be considered in the award selection. See CWC, Inc., B-204445, December 15, 1981, 81-2 CPD 475.

The protest is denied.


for Comptroller General
of the United States